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3

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/052,861	01/16/2002	Paul A. Getchel	TMP-0013CON	2949

7590

03/28/2003

Steven M. Mills, Esq.
Mills & Onello LLP
Suite 605
Eleven Beacon Street
Boston, MA 02108

EXAMINER

FORD, JOHN K

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 03/28/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/052861
09/001,887

Applicant(s)

Getchel et al.

Examiner

FORD

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claims ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2+3
- 18) ☐ Interview Summary (PTO-413) Paper No(s) ____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: ____

Applicant had identified a larger number of US applications and US patents in his power of attorney statement. If there is relevant prior art cited in any of those applications or patents to what is claimed here, a properly completed PTO-1449 form for that prior art must be submitted. As well many of the applications identified have mature into patents. A complete list of all matured applications, now patents, is required in response to this action.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of U.S. Patent No. 6,415,858. Although the conflicting claims are not identical, they are not patentably distinct from each other because they recite the invention more broadly here than in USP 6,415,858. The rationale for requiring a double patenting rejection is fully set forth in the Goodman case cited above. The Examiner relies on the reasoning and analysis set forth there and that reported case is incorporated by reference here.

Art Unit: 3743

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of EP 0411916 and Oswalt et al. (USP 4,850,201).

EP '916, Figure 4, teaches an electrically heated (23) chuck (5) cooled by a constant temperature water circulator (13). No details of the constant temperature water circulator (13) are disclosed, no doubt because it forms no pertinent part of the EP '916 invention.

Oswalt teaches a precision temperature control water chiller, which would have been obvious to use in place of element 13 of EP'916 to attain the precision temperatures needed for EP '916 to operate effectively. The box labeled "LOAD" in Oswalt would replace element 13 in EP '916.

Note a hot gas bypass is shown at 9 in Oswalt. Applicant's claimed "first heat exchanger" is either of heat exchangers 3 or 2 in Oswalt and the "second heat exchanger" is 6 in Oswalt. Regarding claims 12 and 16, see element 23 of EP '916. Regarding claims 13 and 17 see heater 3 of Oswalt. Regarding claims 14 and 18, note that lines 14, 16 and 27 each bypass the heater 3 of Oswalt.

Art Unit: 3743

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 11-18 above, and further in view of Marshall (USP 2,466,460).

Marshall discloses a chiller unit 6 in Figure 1 corresponding in function to Oswalt's unit 6. In Marshall, element 3 corresponds to Oswalt's "LOAD". In Figure 1, Marshall teaches a bypass conduit 19 for the temperature control fluid, which permits it to bypass the chiller 6. The bypass is connected between the return line 8 and supply line 7 (just upstream of pump 9).

To have provided Oswalt with a bypass and condenser pressure controlled valve between return line 13 and a supply line between tank 5 and pump 7 as taught by Marshall would have been obvious to advantageously obtain a more constant load on the compressor based on condenser pressure controlling a bypass valve.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 11-18 above, and further in view of Newton (3,237,415).

The rejection claims 11-18 are incorporated here by reference. Newton teaches a controlled bypass conduit (45, 47) at the discharge side of a return fluid pump 36 with a heat exchanger 60 in it. The bypass conduit bypasses chiller 44 and allows heat exchanger 60 to cool the fluid when weather conditions permit. To have added such a heat exchanger and bypass between the supply and return conduits of Oswalt to permit

Art Unit: 3743

ambient cooling would have been obvious to advantageously save on energy costs (i.e., similar to applicant's heat exchanger 135).

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 11-18 above, and further in view of Finnemore (2,182,174).

Finnemore discloses a chiller bypass 24, which is temperature controlled by valve 14 to bypass the chiller when the load on the system has been met (as determined by temperature sensor 26).

To have added such a chiller bypass to Oswalt to avoid any unnecessary system operation when the load was fully satisfied would have been obvious. Such a modification would advantageously conserve energy.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 11-18 above, and further in view of Tryon (2,917,287) or Padden (4,071,078).


Tryon at 18, 26 and Padden at 92, 90 teach temperature controlled bypasses of the chiller. To have added such bypasses to Oswalt to bypass the chiller when it was not necessary for cooling would have been obvious to conserve on energy.

Application/Control Number: 10/052,861

Page 6

Art Unit: 3743

Any inquiry concerning this communication should be directed to John K Ford at telephone number 703-308-2636.



John K. Ford
Primary Examiner